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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/006,583	12/10/2001	Giorgio Barzaghi	Q67651	3491

7590 05/16/2005

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Washington, DC 20037-3213

EXAMINER

KNOLL, CLIFFORD H

ART UNIT	PAPER NUMBER
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2112

DATE MAILED: 05/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/006,583

Applicant(s)

BARZAGHI ET AL.

Examiner

Clifford H. Knoll

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 21 April 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.

b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because

(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);

(b) ☐ They raise the issue of new matter (see NOTE below);

(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1-14.

Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
Note the attached Response to Arguments.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s).

13. ☐ Other: _____.


TIM VO
PRIMARY EXAMINER

Continuation of 3. NOTE: "spontaneously sends" and "two peripheral units" require further consideration.

Response to Arguments

Applicant argues that James does not disclose "controllers collectively constitute a control apparatus, or that the controllers forward messages to a master controller" (p. 7). As asserted in the previous Office Action, "any feature that comprises control units constitutes a control apparatus" (1/21/05, p. 8), while the Applicant disputes this assertion. However, Examiner notes that an apparatus is "an appliance or device for a particular purpose" and "an integrated group of materials or devices used for a particular purpose" (American Heritage College Dictionary, 4th Ed.). As previously stated, how the claimed "control apparatus" is distinguished from the "integrated group" of "control units" in James is not argued, nor is it clear any distinction in the recitation. Furthermore, Examiner maintains that James' controllers forward messages to a master controller: "Messages are exchanged between the talker 902 and listener's controller 906 when a change in the bandwidth allocated for isochronous data traffic is requested" (col. 8, lines 59-61) which talker comprises any number of control units cited above (e.g., col. 4, lines 33-49). Thus, the Examiner determines that apparatus comprises at least two control units as claimed.

Applicant further argues that James does not disclose "two or more peripheral units" or that control units "spontaneously transmit messages" (p. 8); however, these features would require further consideration as it is amended recitation. Based on a cursory review however, Examiner notes that it would seem the control units of James each consist of numerous peripherals. At the cited passage (col. 4, lines 33-49) James teaches a flexible topology that includes any number of bus bridges and devices. The

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bus bridges may be interpreted as control units to which are attached any number of devices, thus anticipating the claimed "two or more control units" and the newly amended "at least two peripheral units".

Thus the rejection using James is maintained.

Applicant argues that in Takabatake the master controller appears to be the source of the claimed data variation, as distinct from the claimed invention where "the data variation is from a peripheral unit, not from the master controller" (p. 9); however, as taught by Takabatake, "the node to be controlled (radio terminal 121) that received this AV/C command completes a processing corresponding to the received command within 100 msec, and returns a processing execution result for this command" (col. 9, lines 37-40). The Examiner relies on Takabatake's "processing execution result" which is the claimed data variation and is caused by the peripheral, not the master controller.

Applicant further argues that Takabatake does not disclose the peripheral unit (p. 9); however, this is seen in Takabatake as "the constituent elements (Sub Units) 'X1' and 'X2' within the radio terminal 121" (col. 8, lines 50-53).

Applicant further argues that in Takabatake "it is the node 101 that returns a corresponding Ack message to the base station node 110 in response to an AV/C response from the radio terminal 121" and that this "contradicts the Patent Office's position that the node 101 teaches the master controller"; however this is not the case. It is the AV/C response that is relied upon as the data variation provided by the peripheral. What the master controller subsequently does with the message is not pertinent to the purpose of interpreting Takabatake against the claimed invention.

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Thus the rejection using Takabatake is maintained.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Clifford H. Knoll whose telephone number is 571-272-3636. The examiner can normally be reached on M-F 0630-1500.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark H. Rinehart can be reached on 571-272-3632. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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PRIMARY EXAMINER